



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Data Wiring Systems, Inc.

File: B-241732

Date: November 7, 1990

Todd Morefield for the protester.
Christina Sklarew, Esq., and Andrew T. Pogany, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST .

1. Submission and acceptance of below-cost bid is not legally objectionable.
2. Since the basis for setting a procurement aside for small businesses is the reasonable expectation that offers will be obtained from at least two responsible small business concerns, the number of small business firms that actually submitted bids is not relevant to the propriety of the agency's initial determination not to set aside the procurement for exclusive small business participation.

DECISION

Data Wiring Systems, Inc. protests the submission of an allegedly below-cost bid under General Services Administration (GSA) invitation for bids (IFB) No. GSO6P-90-GYC-0228 for a vertical wiring project, and protests the agency's determination not to set the procurement aside for exclusive small business participation. We dismiss the protest pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1990).

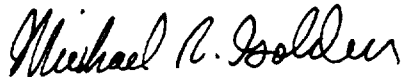
Data alleges that another competitor, Southwestern Bell Telephone, has submitted a bid below cost, in effect subsidizing its bid through its rate base. Data alleges that all Bell operating companies are barred from subsidizing a competitive venture in this way.

The submission and acceptance of a below-cost bid is generally not legally objectionable. See Northwest Cleaning Serv., B-234780, May 31, 1989, 89-1 CPD ¶ 523. The mere fact that Southwestern may have submitted a below-cost bid therefore provides no basis for protest.

Data Wiring also contends that the procurement should have been set aside for exclusive small business participation. The protester supports this argument on the basis that at least two small business concerns actually submitted bids.

As the protester points out, a procurement should be set aside exclusively for small businesses where there is a reasonable expectation that offers will be received from at least two responsible small business concerns and that award will be made at fair market prices. See Federal Acquisition Regulation § 19.502-2 (FAC 84-48). However, the judgment as to whether there is a reasonable expectation that offers will be received from a sufficient number of small businesses to warrant a set-aside involves a business decision to be made before bids are actually received. See generally The Vollrath Co., B-230029, Jan. 29, 1988, 88-1 CPD ¶ 99. Data Wiring has not alleged that the contracting officials were unreasonable in believing that not enough offers would be received from small business concerns to warrant setting the procurement aside.

The protest is dismissed.



Michael R. Golden
Assistant General Counsel